

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MYRON MCQUITTY,

Defendant-Appellee.

UNPUBLISHED

April 14, 2005

No. 251937

Wayne Circuit Court

LC No. 03-008724-01

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Defendant was charged with carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. During the pretrial phase of the proceedings, the trial court repeatedly ordered the police to provide a copy of dispatch tapes to defendant. Defendant did not receive the tapes as ordered. As a sanction for noncompliance with the court's orders, the trial court dismissed the charges without prejudice, and later denied the prosecution's motion to reinstate the charges after the evidence was given to defendant. The prosecution appeals as of right, arguing that the dismissal was an abuse of discretion. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision regarding the appropriate remedy for noncompliance with a discovery order for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). The trial court's exercise of discretion "involves a balancing of the interests of the courts, the public, and the parties." *Id.*, p 598, quoting *People v Loy-Rafuls*, 198 Mich App 594, 597; 500 NW2d 480 (1993), rev'd in part on other grounds 442 Mich 915 (1993). The exercise of discretion "requires inquiry into all the relevant circumstances, including 'the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice.'" *Davie, supra*, quoting *People v Taylor*, 159 Mich App 468, 487; 406 NW2d 859 (1987).

The trial court abused its discretion in dismissing the charges in this case without a showing that the discovery violation actually prejudiced defendant. Defendant claims that he was prejudiced because "[h]e could not make a dispositive motion to suppress evidence because the prosecution refused to abide by the orders of the trial court." Rather than dismissing the case, the court could have avoided any prejudice to defendant by extending the deadline for filing motions until after defendant received the evidence and by granting a continuance as

necessary to enable defendant to properly prepare the case. The availability of a lesser sanction that alleviates any harm to the defendant's case indicates that a more severe remedy is inappropriate. *People v Elston*, 462 Mich 751, 764; 614 NW2d 595 (2000).

The sanction of dismissal was not necessary to preserve the trial court's interest in enforcing its orders. In *Taylor, supra*, pp 484-485, this Court explained that a trial court's interest in enforcing its orders may be served by other remedies, such as a continuance.

As to the courts, their paramount interest in discovery is that it should facilitate the search for truth to the end of producing a just result. As noted in [*People v*] *Merritt*, [396 Mich 67; 238 NW2d 31 (1976),] that is more important than the legitimate concern with prompt disposition of the court's calendar. Continuance as a remedy to allow the opportunity to investigate tardily disclosed evidence does interfere with efficient court administration but it serves the greater public interest of insuring that the trial, when concluded, will not be skewed by the exclusion of trustworthy evidence. . . . And, while the courts have an interest in the integrity of their orders, nothing about noncompliance with a discovery order seems to be the moral or constitutional equivalent of an illegal search or coerced confession so as to justify the extreme sanction of exclusion of evidence without regard to its truth. Other sanctions are available and adequate to deal with counsel who cause the courts and opposing litigants expense and delay by noncompliance with court orders.

Similarly, sanctions other than dismissal were available and adequate to enforce the court's orders in the present case. In addition, as recognized by this Court in *Taylor, supra*, pp 484-485, repetition of the proceedings adversely affects the interest of the court and the public. In this case, such repetition does not advance the interest of defendant other than by delaying the proceedings, an outcome that could be more efficiently achieved by granting a continuance.

Although the court's frustration with the police department and the prosecution was justified, its choice of remedy was not.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder